S.B.CRIMINAL MISC. PETITION NO.71/2007
(Ishwar Joshi Vs. State of Raj.)

Date of order : : 10.04.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Mahendra Trivedi, for the petitioner.
Mr.Ashok Upadhyay, PP for the State.

Heard learned counsel for the parties.

It is alleged that 52 katta of Sagwan wood were seized by the police from the saw-mill factory of one Bahadur Singh. On interrogation, it was informed that these woods belongs to Ishwar Joshi (the present petitioner). The police registered a case under Section 32, 33, 41 and 42 of the Rajasthan Forest Act and Section 411, 414 and 420 IPC against the petitioner. The papers of builty and TP were also produced.

The SHO, Thana Ambapura filed an application before the learned Magistrate, Banswara for auction of the seized woods which was allowed by the learned Magistrate vide his order dated 15.12.2006.

Learned counsel for the petitioner states that lower court without hearing the petitioner has passed the order dated 15.12.2006 and ordered the auction of the recovered Sagwan wood.

I have heard learned counsel for the petitioner and persued the orders passed by learned Magistrate and learned revisional court. The learned Magistrate has ordered to auction the seized wood on application filed by SHO stating inter alia that seized wood are lying in the premises of police station and their utility and price is decreasing. Therefore, it was ordered to be auctioned. It appears that learned Magistrate has not given notice to the petitioner before passing the order dated 15.12.2006 but since wood are perishable, therefore, looking to the emergency, learned Magistrate after relying on the judgment of Hon'ble Supreme Court in the case of Sunder Bhai Amba Lal Desai Vs. State of Gujarat reported in 2003 SC 638 has passed the order for auctioning the woods.

The petitioner has challenged this order in revisional court and has also taken the same ground that he has not been

heard. Learned revisional court after hearing the parties has reached to the conclusion that no Hammer mark was found over the seized woods. The purchasing of wood from Indore on 26.5.2006 was also not found to be correct as this wood was cut only 10 days before. Learned revisional court has considered all aspect of the matter and dismissed the revision petition of the petitioner. It is apparent from the order passed by learned revisional court that petitioner was heard on this point, therefore, it cannot be said that impugned order was passed without hearing the petitioner.

Looking to all the facts and circumstances of the case, since, the learned Magistrate has passed the order for auction of the seized wood after considering all aspects of the matter which has also been confirmed by the learned reivisional court, I do not find any ground to interfere with the orders impugned. There is no misuse of process of court. Further more, no prejudice will be caused to the petitioner as learned revisional court has already ordered that the amount received from the auction be kept in the bank as Fixed Deposit and the same shall be disbursed as per law at the time of final hearing after the

judgment is pronounced. However if petitioner wants to take part in the auction proceedings, he shall be at liberty to take part in the auction proceedings.

With the aforesaid observation, this misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.

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